IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 74 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PACKART PVT LTD

Versus

COMMISSIONER OF INCOME TAX

Appearance:

1. INCOME TAX REFERENCE No. 74 of 1992
NOTICE SERVED for Petitioner No. 1
MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE K.M.MEHTA

Date of decision: 20/11/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the applicant-assessee the following question has been referred to this Court for its opinion under the provisions of Section 256(1) of the Income-tax Act by the Income-tax Appellate Tribunal, Ahemdabad Bench-B.

"Whether, on the facts and in the circumstances of the case, the Tribunal is justified in upholding the disallowance of interest amounting to Rs. 40,352/- claimed u/s. 28, 36(1)(iii) or Sec. 37 of the I.T. Act, 1961?"

Learned advocate Shri B.D. Karia has appeared for the applicant-assessee whereas learned Senior Central Government Standing Counsel Shri B.B.Naik has appeared for the revenue.

The assessee is a limited Company which had paid interest on the amount which was borrowed for the purpose of payment of Income-tax. The amount of interest paid by the assessee was disallowed by the assessing Officer. Being aggrieved by the disallowance, the assessee filed an appeal before the C.I.T. (Appeals) but the appeal had been dismissed. The appeal filed before the Tribunal had also been dismissed. In the circumstances, the question referred to hereinabove is to be decided by this Court.

The learned advocates have fairly submitted that the question which has been referred to this Court has been answered by this Court in the judgement delivered in the case of SARASPUR MILLS LTD Vs. COMMISSIONER OF INCOME-TAX reported in [1997] 226 I.T.R. 533. Moreover, it has been submitted that in principle, the Hon'ble Supreme Court has also decided in the case of EAST INDIA PHARMACEUTICAL WORKS LTD. Vs. COMMISSIONER OF INCOME-TAX reported in [1997] 224 I.T.R. 627 that such interest paid by the assessee would not amount to business expenditure and, therefore, such an expenditure cannot be allowed.

Looking to the law laid down by the Hon'ble Supreme Court as well as by this Court, in our opinion, the Tribunal was not in error in confirming the views expressed by the revenue authorities.

In the circumstances, we are also of the opinion that the Tribunal was justified in disallowing the amount of expenditure which was in the nature of interest which

was paid on the amount which was borrowed for the purpose of paying income-tax. We therefore answer the question in the affirmative i.e. in favour of the revenue and against the assessee.

The Reference thus stands disposed of with no order as to costs.

(A.R. DAVE,J.)

(K.M. MEHTA,J.)

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